

**STATE OF RHODE ISLAND
PUBLIC UTILITIES COMMISSION**

IN RE: NARRAGANSETT BAY COMMISSION : **DOCKET NO. 4944**
PETITION FOR A PRIVATE AT-GRADE CROSSING :

REPORT AND ORDER

I. Introduction

On April 16, 2019, pursuant to R.I. Gen. Laws §§ 39-8-1.1¹ and 39-8-1.3,² the Narragansett Bay Commission (NBC) filed with the Public Utilities Commission (PUC or Commission) a Petition for a Private, At-Grade Crossing (Crossing) at Milepost +/- 2.07 over the Providence and Worcester Railroad Company’s (P&W) Harbor Junction Line in Providence, Rhode Island.³ The Petition was accompanied by an aerial photograph, a line drawing, and a letter of support from the City of Providence. After review by the Division of Public Utilities and Carriers (Division), NBC supplemented its Petition with engineered design plans.⁴ The Crossing was proposed to be located at NBC’s private roadway connecting New York Avenue and Shipyard Street. Although a dispute between NBC and the Division arose concerning appropriate signals, the parties eventually reached a settlement. At an Open Meeting on November 5, 2019, the PUC approved the Petition, finding it to be consistent with its statutory authority and determining that the private crossing will be constructed and maintained in a manner that promotes public safety.

¹ In R.I. Gen. Laws § 39-8-1.1, the legislature, citing its “exercise of the police power of the state for the safety of its inhabitants,” vested in the Commission “the authority and power to determine the point at which and the manner in which any grade crossing of a railroad and a street shall be constructed and the jurisdiction to determine whether any crossing should be altered . . . and the manner and conditions under which the crossings shall be maintained.”

² R.I. Gen. Laws §39-8-1.3 provides that “[n]o railroad owning railroad tracks within the state shall enter into an agreement of any nature whatsoever with any private party for the establishment of a private crossing at grade, unless and until the railroad shall have obtained permission from the commission for the establishment of the private crossing.”

³ All filings in this docket are available at the PUC offices located at 89 Jefferson Boulevard, Warwick, Rhode Island or at http://www.ripuc.ri.gov/eventsactions/docket/4944-NBC-Petition-GradeCrossing_4-16-19.pdf.

⁴ Revised Plans; [http://www.ripuc.ri.gov/eventsactions/docket/4944-NBC-RevisedPlans\(9-20-19\).pdf](http://www.ripuc.ri.gov/eventsactions/docket/4944-NBC-RevisedPlans(9-20-19).pdf).

II. NBC's Petition

NBC, a quasi-public corporation with a principal place of business in Providence, Rhode Island, owns and operates the largest wastewater treatment utility in the State. NBC has a wastewater treatment plant, the Fields Point facility, located alongside the Port of Providence. NBC also owns land nearby on Shipyard Street. The NBC campus in Providence is generally open to public traffic. For security reasons, however, the area at the New York Avenue end of Service Road has been closed for a number of years. Due to increased offshore activity as well as the requirements of the Marine Transportation Security Act of 2002, NBC planned to further tighten security on its campus. Specifically, it decided to close the Ernest Street end of Service Road to public traffic. To provide internal access to areas of the campus that are not a high security concern, NBC proposed to create the Crossing.

Although P&W has an easement to operate its rail line over NBC's real property, the easement is subject to NBC's right to cross the rail line. P&W supports NBC's petition to construct the new rail Crossing. The two entered into a Memorandum of Understanding (MOU) for a construction agreement and grade crossing license, both of which are subject to and conditioned upon obtaining approval by the PUC.⁵

The use of the proposed Crossing will be largely limited to NBC, its tenants, servants, employees, contractors, patrons, licensees, and agents having business with NBC or with its tenants. Two other businesses in the Port, ProvPort and SMN New England Corporation d/b/a Sims Metal Management, will also be authorized to use the Crossing. NBC has agreed to pay annual maintenance fees to P&W, to cover the costs of routine maintenance and inspection of the Crossing, as well as all costs and expenses for repairs. NBC will also be responsible for

⁵ Petition at 4.

maintaining P&W's property in the vicinity of the Crossing, keeping it free and clear of vegetation and debris, as well as keeping the line of sight open for approaching trains.⁶ The Crossing will include automatic warning devices, signs, and other safety features.

III. Division's Position

The Division retained Pare Corporation (Pare) as its consulting engineer to review NBC's proposed plans and specifications. On June 18, 2019, Pare conducted a site visit and identified two concerns: (1) site distance and visibility was diminished in the area of the Crossing by the rail line's curvature and vegetative overgrowth and (2) the southbound approach to the Crossing had a substantial grade, presenting braking-safety concerns for heavy vehicles that might cross in wet or icy conditions. Subsequently, Pare also reviewed engineered plans for the Crossing that were prepared by P&W. Those plans depicted the Crossing with flashing signals and a bell on both approaches. They also included a stop sign at the approach to the bend in the service road north of the Crossing and advance railroad warning signs for both approaches. Railroad crossing pavement markings were also proposed for both approaches.

Pare identified a number of problems with P&W's plans. Pare noted that the plans failed to indicate anticipated train speeds for the Crossing or any volume of expected train activity. Pare further stated that, although the proposed railroad Crossing was intended primarily for internal circulation and operations by NBC, it was possible there would be public traffic at the connection.

Pare's review also included the plans' compliance with federal guidelines applicable to at-grade crossings, encompassing the regulations issued by the Federal Highway Administration (FHWA), as documented in the Manual on Uniform Traffic Control Devices (MUTCD) and the American Railway Engineering and Maintenance-of-Way Association (AREMA). Pare noted that

⁶ Petition at 5.

the FHWA has many roles in relation to at-grade rail crossings, including determination of factors that warrant passive or active crossing control; establishment of best practices for safe passive and active crossing designs; and procedures for safety review, reporting, and mitigation of crossings following initial construction.⁷ Pare identified and listed twelve specific safety criteria from the FHWA/MUTCD applicable to the proposed Crossing.

Pare recommended a series of design modifications. Some were simply administrative modifications to the plans, some addressed the field design of the Crossing.⁸ Pare's primary recommendation involved changing the proposed warning device for the northern approach from a Type I device to a Type III device, with specific signage on top of the Type III device.

IV. Settlement

While NBC initially agreed with most of the Division's recommendations for plan and site amendments, it failed to agree to the recommended changes for the warning device on the northern approach.⁹ After further discussions between the parties' engineers, however, NBC agreed to adopt additional safety recommendations for the Crossing approaches and the service road. On November 4, 2019, NBC submitted revised plans that incorporated all the recommendations in the Division's October 23, 2019 memorandum.¹⁰

At an Open Meeting on November 5, 2019, the Commission voted unanimously to approve NBC's Petition for a Private At-Grade Crossing over P&W's rail line. The Commission found the Construction Agreement and Grade Crossing License executed by NBC and P&W and the revised plans to be in the best interest of the safety of the citizens of Rhode Island.

⁷ Division Mem. at 2.

⁸ *Id.* at 3.

⁹ See Amended Division Memo at 3-4 (Oct. 23, 2019); <http://www.ripuc.ri.gov/eventsactions/docket/4944-DIV-Memo%2011-4-19.pdf>.

¹⁰ Revised plans; <http://www.ripuc.ri.gov/eventsactions/docket/4944-NBC-Complete%20Unsigned%20Railroad%20Crossing%20Plan%2011-4-19.pdf>

Accordingly, it is hereby

(23875) ORDERED:

1. The Petition filed by the Narragansett Bay Commission for a Private At-Grade Crossing over the Providence & Worcester Railroad Company's Harbor Junction Line in Providence, Rhode Island and to construct improvements necessary to cross said track and other necessary improvements is approved, in accordance with the revised engineering plans prepared by Waterman Engineering.

2. The terms of the Grade Crossing License entered into by the Narragansett Bay Commission and the Providence & Worcester Railroad Company as set forth in the Petition as well as the revised plans and specifications are made part of and incorporated into this Order.

3. The Narragansett Bay Commission shall notify the Public Utilities Commission and the Division of Public Utilities and Carriers if the use of the at-grade railroad crossing changes in any material way.

4. This Order is subject to any applicable Department of Transportation requirements. The Rhode Island Department of Transportation was notified but did not participate in the Docket.

EFFECTIVE AT WARWICK, RHODE ISLAND ON NOVEMBER 5, 2019 PURSUANT
TO AN OPEN MEETING DECISION. WRITTEN ORDER ISSUED AUGUST 4, 2020.

PUBLIC UTILITIES COMMISSION

*Margaret E. Curran, Chairperson



Marion S. Gold, Commissioner



Abigail Anthony, Commissioner

*Chairperson Curran concurred with the decision but is unavailable for signature.

NOTICE OF RIGHT OF APPEAL: Pursuant to R.I. Gen. Laws §39-5-1, any person aggrieved by a decision or order of the PUC may, within seven (7) days from the date of the order, petition the Supreme Court for a Writ of Certiorari to review the legality and reasonableness of the decision or order.